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12 Attorneys for Plaintiff,
13 Fabian Hernandez

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 Fabian Hernandez,

17 Plaintiff,

18 vs.

19 Roquemoire & Roquemoire, Inc.; and
20 DOES 1-10, inclusive,

21 Defendants.

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.

JURY TRIAL DEMANDED

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COMPLAINT FOR DAMAGES

E-FILING

FILED

APR 29 2013

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

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CV 13-01948 PSG

1 For this Complaint, the Plaintiff, Fabian Hernandez, by undersigned counsel,
2 states as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
11

12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
13 Defendants transact business here and a substantial portion of the acts giving rise to
14 this action occurred here.
15

16 **PARTIES**

17 4. The Plaintiff, Fabian Hernandez (hereafter "Plaintiff"), is an adult
18 individual residing in King City, California, and is a "consumer" as the term is
19 defined by 15 U.S.C. § 1692a(3).
20

21 5. Defendant Roquemoire & Roquemoire, Inc. ("Roquemoire"), is a Texas
22 business entity with an address of P.O. Box 743608, Dallas, Texas 75374-3608,
23 operating as a collection agency, and is a "debt collector" as the term is defined by 15
24 U.S.C. § 1692a(6).
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1 6. Does 1-10 (the "Collectors") are individual collectors employed by
2 Roquemore and whose identities are currently unknown to the Plaintiff. One or more
3 of the Collectors may be joined as parties once their identities are disclosed through
4 discovery.
5

6 7. Roquemore at all times acted by and through one or more of the
7 Collectors.
8

9 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

10 **A. The Debt**

11 8. The Plaintiff allegedly incurred a financial obligation (the "Debt") to an
12 original creditor (the "Creditor").
13

14 9. The Debt arose from services provided by the Creditor which were
15 primarily for family, personal or household purposes and which meets the definition
16 of a "debt" under 15 U.S.C. § 1692a(5).
17

18 10. The Debt was purchased, assigned or transferred to Roquemore for
19 collection, or Roquemore was employed by the Creditor to collect the Debt.
20

21 11. The Defendants attempted to collect the Debt and, as such, engaged in
22 "communications" as defined in 15 U.S.C. § 1692a(2).
23

24 **B. Roquemore Engages in Harassment and Abusive Tactics**

25 12. Within the last year, Roquemore contacted Plaintiff in an attempt to
26 collect the Debt.
27
28

1 13. During the initial conversation and during most conversations thereafter,
2 Roquemore failed to identify itself to Plaintiff and failed to inform Plaintiff that the
3 call was an attempt to collect the Debt and all information obtained would be used for
4 that purpose.
5

6 14. Roquemore called Plaintiff at his place of employment in an attempt to
7 collect the Debt.
8

9 15. Plaintiff advised Roquemore that the calls to his work place were
10 prohibited by policy of his employer and requested that no further calls be placed to
11 Plaintiff's place of employment.
12

13 16. Despite having been so informed, Roquemore continued calling Plaintiff
14 at his place of employment up to three times per day on a daily basis. These calls
15 caused a great deal of distress and fear for his job to Plaintiff.
16

17 17. During one calls to Plaintiff's workplace, Roquemore disclosed the
18 existence of the Debt to Plaintiff's employer, causing humiliation to Plaintiff.
19 Roquemore offered to pay Plaintiff's employer to take the vehicle away from Plaintiff.
20

21 18. Roquemore used bullying tactics during conversations with Plaintiff,
22 often times yelling at him in an effort to intimidate Plaintiff into making an immediate
23 payment.
24

25 19. On one occasion, Plaintiff's nine-year-old son answered a call from
26 Roquemore. Plaintiff's son informed Roquemore that his father was not at home.
27
28

1 Roquemore proceeded to yell at the child, calling him a "liar" and demanding that he
2 hand the phone to Plaintiff immediately.
3

4 20. Roquemore also made several calls to Plaintiff's cousin, stating that the
5 calls were regarding an "urgent matter."
6

7 21. Roquemore called Plaintiff's cousin for purposes other than Plaintiff's
8 location information, as it already had spoken with Plaintiff and knew his location
9 information.
10

11 22. Roquemore called Plaintiff's cousin on several occasions, despite her
12 requests to cease calling her.
13

14 **COUNT I**
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 **15 U.S.C. § 1692, et seq.**

16 23. The Plaintiff incorporates by reference all of the above paragraphs of this
17 Complaint as though fully stated herein.
18

19 24. The Defendants contacted the Plaintiff at his place of employment,
20 knowing that the Plaintiff's employer prohibited such communications, in violation of
21 15 U.S.C. § 1692c(a)(3).
22

23 25. The Defendants communicated with individuals other than the Plaintiff,
24 the Plaintiff's attorney, or a credit bureau, in violation of 15 U.S.C. § 1692c(b).
25
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1 26. The Defendants engaged in behavior the natural consequence of which
2 was to harass, oppress, or abuse the Plaintiff in connection with the collection of a
3 debt, in violation of 15 U.S.C. § 1692d.
4

5 27. The Defendants caused a phone to ring repeatedly and engaged the
6 Plaintiff in telephone conversations, with the intent to annoy and harass, in violation
7 of 15 U.S.C. § 1692d(5).
8

9 28. The Defendants placed calls to the Plaintiff without disclosing the
10 identity of the debt collection agency, in violation of 15 U.S.C. § 1692d(6).
11

12 29. The Defendants failed to inform the consumer that the communication
13 was an attempt to collect a debt, in violation of 15 U.S.C. § 1692e(11).
14

15 30. The Defendants used unfair and unconscionable means to collect a debt,
16 in violation of 15 U.S.C. § 1692f.

17 31. The foregoing acts and omissions of the Defendants constitute numerous
18 and multiple violations of the FDCPA, including every one of the above-cited
19 provisions.
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21 32. The Plaintiff is entitled to damages as a result of the Defendants'
22 violations.
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COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 et seq.

33. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The Rosenthal Fair Debt Collection Practices Act, California Civil Code section 1788 et seq. ("Rosenthal Act") prohibits unfair and deceptive acts and practices in the collection of consumer debts.

35. Roquemore & Roquemore, Inc., in the regular course of business, engages in debt collection and is a "debt collector" as defined by Cal. Civ. Code § 1788.2(c).

36. The Defendants caused a telephone to ring repeatedly and engaged the Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).

37. The Defendants failed to comply with the provisions of 15 U.S.C. § 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.13(e).

38. The Defendants communicated with the Plaintiff's employer about the Plaintiff's debt, without consent of the Plaintiff's attorney or the Plaintiff, and without the purpose of verifying location or employment information, in violation of Cal. Civ. Code § 1788.12(a).

1 39. The Defendants communicated information about the debt to the
2 Plaintiff's extended family, without the intent of confirming the Plaintiff's location
3 and without consent from the Plaintiff or the Plaintiff's attorney, in violation of Cal.
4 Civ. Code § 1788.12(b).

5
6 40. The Defendants did not comply with the provisions of Title 15, Section
7 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.

8
9 41. The Plaintiff is entitled to damages as a result of the Defendants'
10 violations.

11
12 **COUNT III**
13 **INVASION OF PRIVACY BY INTRUSION UPON SECLUSION**

14 42. The Plaintiff incorporates by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.

16 43. The Restatement of Torts, Second, § 652B defines intrusion upon
17 seclusion as, "One who intentionally intrudes...upon the solitude or seclusion of
18 another, or his private affairs or concerns, is subject to liability to the other for
19 invasion of privacy, if the intrusion would be highly offensive to a reasonable person."
20

21 44. California further recognizes the Plaintiff's right to be free from
22 invasions of privacy, thus the Defendants violated California state law.

23 45. The Defendants intentionally intruded upon Plaintiff's right to privacy by
24 continually harassing Plaintiff with the above referenced telephone calls.
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46. The telephone calls made by the Defendants to Plaintiff were so persistent and repeated with such frequency as to be considered, “hounding the plaintiff,” and, “a substantial burden to her existence,” thus satisfying the Restatement of Torts, Second, § 652B requirement for an invasion of privacy.

47. The conduct of the Defendants in engaging in the illegal collection activities resulted in multiple invasions of privacy in such a way as would be considered highly offensive to a reasonable person.

48. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from the Defendants.

49. All acts of the Defendants and its agents were committed with malice, intent, wantonness, and recklessness, and as such, the Defendants are subject to punitive damages.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

50. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully set forth herein at length.

51. The acts, practices and conduct engaged in by the Defendants vis-à-vis the Plaintiff was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

52. The foregoing conduct constitutes the tort of intentional infliction of emotional distress under the laws of the State of California.

53. All acts of Defendants and the Collectors complained of herein were committed with malice, intent, wantonness, and recklessness, and as such, Defendants are subject to imposition of punitive damages.

54. Defendants could reasonably foresee its conduct would cause mental anguish and severe emotional distress to Plaintiff.

55. Plaintiff did indeed suffer mental anguish and severe emotional distress including post-traumatic stress, paranoia, and depression.

56. Defendant's conduct resulted in reckless infliction of emotional distress under the laws of the State of California.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the
 !
 Defendants:

A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants:

B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;

C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;

1 D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

2 E. Statutory damages of \$1,000.00 for knowingly and willfully committing
3 violations pursuant to Cal. Civ. Code § 1788.30(b);

4 F. Actual damages from the Defendants for the all damages including
5 emotional distress suffered as a result of the intentional, reckless, and/or
6 negligent FDCPA violations and intentional, reckless, and/or negligent
7 invasions of privacy in an amount to be determined at trial for the
8 Plaintiff;

9 G. Punitive damages; and

10 H. Such other and further relief as may be just and proper.

11 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

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19 DATED: April 23, 2013

TAMMY HUSSIN

20
21 By: /s/ Tammy Hussin
22 Tammy Hussin, Esq.
23 Lemberg & Associates, LLC
24 Attorney for Plaintiff Fabian Hernandez
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JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

E-FILING

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Fabian Hernandez

(b) County of Residence of First Listed Plaintiff County of Monterey
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Tammy Hussin, 6404 Merlin Drive, Carlsbad, CA 92011; (855) 301-2300
ext. 5514; of counsel to Lemberg & Associates, LLC, 1100 Summer
Street, Third Floor, Stamford, CT 06905; (203) 653-2250

DEFENDANTS

Roquemore & Roquemore, Inc.

County of Residence of First Listed Defendant State of Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Environmental Matters <input type="checkbox"/> 893 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692

Brief description of cause:
Violations of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
25,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE ☐ EUREKA

DATE 04/23/2013

SIGNATURE OF ATTORNEY OF RECORD /s/ Tammy Hussin